

Supreme Court, U.S.

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NO. 89-1685

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1989

STATE OF MICHIGAN,
Petitioner,

vs.

ROBERT ALAN GRZEGORCZYK,
Respondent.

BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF MICHIGAN

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STATEMENT OF QUESTIONS PRESENTED

- I. DOES THE DECISION OF THE MICHIGAN COURT OF APPEALS REST ON AN ADEQUATE AND INDEPENDENT STATE GROUND?

Defendant-Appellant answers, "Yes".

- II. BECAUSE OF "THE NARROW FACTS" INVOLVED IN RESPONDENT GRZEGORCZYK'S CASE, IS THERE NO IMPORTANT FEDERAL QUESTION INVOLVED, AND WOULD GRANTING CERTIORARI SERVE NO USEFUL PURPOSE?

Defendant-Appellant answers, "Yes".

- III. DID THE MICHIGAN COURT OF APPEALS CORRECTLY RULE THAT WHERE RESPONDENT GRZEGORCZYK HAD ALREADY BEEN DISCHARGED FROM HIS ORIGINAL PRISON SENTENCE, THE CIRCUIT COURT HAD NO JURISDICTION TO RESENTENCE HIM TO LIFE PROBATION?

Defendant-Appellant answers, "Yes".

SUMMARY OF ARGUMENT

In 1983 Respondent Robert Grzegorzczuk was sentenced to a term of five to twenty years for a delivery of cocaine. The Michigan Court of Appeals affirmed his conviction. However, the Court ordered him resentenced, saying that the sentence was not permitted under Michigan law: the sentence had to be probation for life or an indeterminate term of ten to twenty years. 10a-11a.

During the time his appeal was pending and after he had served three and one-half years in the Michigan prison system, Grzegorzczuk was released on parole. 25a. While his application for discretionary review was still pending in the Michigan Supreme Court, the Parole Board of the Michigan Department of Corrections gave him a complete discharge. 21a. The order is entitled "Parole Board Order for Discharge from Sentence." 27a.

At the resentencing held on March 5, 1987, "the trial judge was sympathetic to defendant's predicament, calling it 'an unfortunate case.'" 21a. The judge noted

Respondent Grzegorzczuk's "exemplary record." 22a. Because of the Court of Appeals decision limiting his options, the judge sentenced Grzegorzczuk to life probation, rather than the indeterminate prison term of ten to twenty years.

Respondent Grzegorzczuk appealed a second time to the Michigan Court of Appeals. That Court reversed the sentence of life probation and ordered him discharged from the sentence, with one judge dissenting. "On these limited facts, defendant cannot be compelled to serve an additional sentence." 30a; People v Gregorczyk [sic], 178 Mich App 1, 12; 443 NW2d 816 (1989). The Michigan Supreme Court denied the prosecution's application for leave to appeal and motion for reconsideration. The Court also denied as moot Grzegorzczuk's cross-application on the issues he lost in the Court of Appeals. 35a-36a.

For three separate reasons this Court should deny the prosecution's Petition For A Writ Of Certiorari:

First, the decision of the Michigan Court of Appeals rests on an adequate and independent state ground, so this Court has no jurisdiction to hear the case. Issue I.

Second, because of "the narrow facts of this case," there is no important federal question involved. Granting certiorari would serve no useful purpose. Issue II.

Third, the Michigan Court of Appeals correctly ruled that where Respondent Grzegorzczuk had already been discharged from his original prison sentence, the trial court had no jurisdiction to resentence him to life probation. Issue III.

I. THE DECISION OF THE MICHIGAN COURT OF APPEALS RESTS ON AN ADEQUATE AND INDEPENDENT STATE GROUND.

The Michigan Court of Appeals reversed Respondent Robert Grzegorzczuk's sentence of life probation and ordered him discharged from the sentence. "On these limited facts, defendant cannot be compelled to serve an additional sentence." 30a; People v Gregorzczuk [sic], 178 Mich App 1, 12; 443 NW2d 816 (1989).

In its discussion the Court of Appeals referred to this Court's interpretation of the double jeopardy and due process clauses of the Fifth and Fourteenth Amendments. In particular, the Court of Appeals discussed the protections "against multiple punishment for the same offense." 22a-23a, 178 Mich App at 5; citing North Carolina v Pearce, 395 US 711, 717; 89 S Ct 2072; 23 L Ed 2d 656 (1969). The Court "appl[ied] the principle" of Pearce to the facts of the instant case. 25a, 178 Mich App at 7.

The Court of Appeals went on to find that Respondent Grzegorzczuk's "release and discharge from parole was an act carried

out by the executive branch of state government" and "was therefore an exercise of executive powers."^{1/} 27a, 178 Mich App at 10. The Court had to "determine the effect of defendant's discharge by the Department of Corrections" and found "Only one reported Michigan case" that addressed the effect of an absolute discharge from parole. 28a, 178 Mich App at 11.

That case was In re Eddinger, 236 Mich 668, 670; 211 NW 54 (1926), from which the Court of Appeals quoted:

"The absolute discharge is something more than a release from parole. It is a remission of the remaining portion of the sentence. Like a pardon, it is a gift from the executive, and like

1/ Concerning the governor's "power to grant reprieves, commutations and pardons," see the Michigan Const 1963, art 5, §14. It is ironic that even though the original five to twenty year sentence was improper at the time it was given, the Michigan Legislature later amended the statute to make that sentence a legal one. 20a, 178 Mich App at 3, n 1. Also, the sentencing judge can now depart from the authorized minimum term of imprisonment "if the court finds on the record that there are substantial and compelling reasons to do so." MCL 333.7401(4); MSA 14.15(7401)(4).

any other gift it does not become effective until it is delivered and accepted. After delivery it cannot be recalled." 29a, 178 Mich App at 11.

Because Grzegorzczuk received an absolute discharge from the balance of his first sentence, the Court held that the discharge operated as "a remission of the remaining portion of his sentence" under Eddinger and that "his obligation to the state has ended." 30a, 178 Mich App at 12.

Although the Michigan Court of Appeals mentioned the federal double jeopardy and due process clauses in its decision, the decision rested on the Court's application of Eddinger, a Michigan case interpreting Michigan law and the powers of the Michigan Executive. The decision of the Court of Appeals rests on an adequate and independent state ground, so this Court has no jurisdiction to hear the case. Michigan v Long, 463 US 1032; 103 S Ct 3469; 77 L Ed 2d 1201 (1983).

II. BECAUSE OF "THE NARROW FACTS" INVOLVED IN RESPONDENT GRZEGORCZYK'S CASE, THERE IS NO IMPORTANT FEDERAL QUESTION INVOLVED, AND GRANTING CERTIORARI WOULD SERVE NO USEFUL PURPOSE.

Respondent Robert Grzegorzczuk was given a complete discharge from parole on October 24, 1986. 21a, 29a, 178 Mich App at 3, 12. At the resentencing held on March 5, 1987, "the trial judge was sympathetic to defendant's predicament, calling it 'an unfortunate case.'" 21a. The judge noted Respondent Grzegorzczuk's "exemplary record." 22a. Because of the Court of Appeals decision limiting his options, the judge sentenced Grzegorzczuk to life probation, rather than the indeterminate prison term of ten to twenty years.

In Grzegorzczuk's second appeal, the Michigan Court of Appeals began its opinion by saying, "This is a case of first impression in Michigan by virtue of the unique factual situation it presents." 20a, 178 Mich App at 3. Later the Court referred to "the narrow facts of this case." 26a, 178 Mich App at 9. In reversing the sentence

and discharging Grzegorzcyk from it, the Court said, "On these limited facts, defendant cannot be compelled to serve an additional sentence." 30a; 178 Mich App at 12.

"A petition for a writ of certiorari will be granted only when there are special and important reasons therefor." Supreme Court Rule 10.1. Reasons for granting certiorari are that a state court "has decided an important question of federal law which has not been, but should be, settled by this Court" or has decided a federal question in a way that conflicts with this Court's decisions. Id., at (c).

Respondent Robert Grzegorzcyk was sentenced to prison, released on parole during his appeal, discharged from the parole, but then resentenced to probation as a delayed result of the original appeal. Because of "the unique factual situation", "the narrow facts," and "these limited facts," there are no "special and important reasons" for granting the petition. The decision of the Michigan Court of Appeals discharging Grzegorzcyk from his sentence is not an important one that needs to be considered by this Court. Granting certiorari would serve no useful purpose.

III. THE MICHIGAN COURT OF APPEALS CORRECTLY RULED THAT WHERE RESPONDENT GRZEGORCZYK HAD ALREADY BEEN DISCHARGED FROM HIS ORIGINAL PRISON SENTENCE, THE CIRCUIT COURT HAD NO JURISDICTION TO RESENTENCE HIM TO LIFE PROBATION.

Under the peculiar facts of the instant case, the sentence of life probation after Respondent Grzegorzcyk was a free man was a violation of due process and double jeopardy protections. US Const, Ams V, XIV. As the Michigan Court of Appeals said, giving another sentence after a defendant has finished serving his first constitutes "multiple punishment for the same offense." 23a, 25a, 178 Mich App at 5, 9, citing North Carolina v Pearce, 395 US 711, 717; 89 S Ct 2072; 23 L Ed 2d 656 (1969).

In Jones v Thomas, ___ US ___; 109 S Ct 2522; 105 L Ed 2d 322 (1989), this Court recently discussed multiple sentencing where the defendant was given consecutive terms for an underlying felony and for felony murder. After the defendant finished

serving his sentence on the underlying felony, that conviction and sentence were vacated on double jeopardy grounds. This Court upheld the remedy of giving the defendant credit on his felony murder sentence for the time served on the underlying felony, rather than discharging him entirely.

Citing Pearce, supra, and In re Bradley, 318 US 50; 63 S Ct 470; 87 L Ed 608 (1943), the Court noted that while it would not be possible to credit a fine against time in prison, "crediting time served under one sentence against the term of another has long been an accepted practice." 109 S Ct at 2527. Such a remedy is impossible here, as Grzegorzczuk's prison time cannot be equated to time on probation, any more than a fine could be.

After arguing that the Michigan Court of Appeals was incorrect in discharging Respondent Grzegorzczuk from his sentence of life probation, at page 12 of the Petition the prosecution suggests the remedy of giving Grzegorzczuk "credit on reserve." The Petitioner argues that the concerns of Pearce, supra, for giving credit on a

second sentence for time already served on a first sentence can be satisfied "under the unusual facts in this case." The Petitioner suggests that credit be given for Grzegorzczuk's prison time should his probation ever be revoked and a prison sentence reimposed.

Respondent Grzegorzczuk served three and a half years in prison and a term on parole before receiving a complete discharge from his sentence, not just from his parole: the Parole Board's order is entitled "Parole Board Order for Discharge from Sentence." 27a, 178 Mich App at 9-10. As the Michigan Supreme Court stated in another context, his discharged status "inheres in him. It cannot be erased, or forgotten, or undone, any more than can his ... years of confinement thereunder." People v Smith, 405 Mich 418, 435; 275 NW2d 466 (1979).

It was fundamentally unfair to give Grzegorzczuk a second sentence. The doctrine of equitable estoppel means that a person may be precluded by his act or conduct from asserting a right that he otherwise would have had. By serving the

initial sentence Grzegorzcyk paid any debt he had to the state, so that the discharge from the original sentence operated as an equitable estoppel to prevent the state from giving him an additional sentence.

"The state, as well as an individual, may be estopped by its acts, conduct, silence, and acquiescence." Wiersma v Michigan Bell, 156 Mich App 176, 185; 401 NW2d 265 (1986).

Given the completion of one sentence, it would be unfair to uphold the second sentence of life probation and to punish Grzegorzcyk by the disability of being on probation until he dies. "He is forever kept under the shadow of his crime

. . . ." Weems v United States, 217 US 349, 366; 30 S Ct 544; 54 L Ed 793 (1910).

As Justice Scalia wrote in dissent in Jones, supra, "if respondent has served one of the two alternative sentences that could lawfully be imposed, he cannot be required to serve the other as well." 109 S Ct at 2530. He went on to say, "the Double Jeopardy Clause is a statute of repose for sentences as well as for proceedings. Done is done." Id., at 2531. "The State broke

the rules here, and must abide by the result." At 2533. Respondent Grzegorzczuk had a "legitimate expectation of finality" in his discharge from his sentence by the Michigan Parole Board, and another sentence could not be added to the first. At 2532, citing United States v DiFrancesco, 449 US 117, 139; 101 S Ct 426; 66 L Ed 2d 328 (1980).

The Michigan Court of Appeals correctly ruled that where Respondent Grzegorzczuk had already been discharged from his original prison sentence, the trial court had no jurisdiction to resentence him to life probation.

CONCLUSION

WHEREFORE, Respondent Robert Alan Grzegorzczuk requests this Court to deny the Petition For A Writ Of Certiorari; in the alternative, if this Court ultimately reverses the Michigan Supreme Court and Court of Appeals, then Respondent requests a remand to the Michigan Supreme Court for reconsideration of the issues raised in his application for a cross-appeal, which that Court denied as "moot" when it denied the prosecution's application for leave to appeal.

Respectfully submitted,

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